

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1555 of 1988

to

FIRST APPEAL No 1576 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VANECHAND KALIDAS SHAH

Appearance:

Mr.M.R. Raval, AGP, for the State in F.A. Nos. 1555 to 1561 of 1988.

Mr.P.G. Desai, GP, for the State in F.A. Nos. 1562 to 1569 of 1988.

Mr.H.L. Jani, AGP, for the State in F.A. Nos.1570 to 1576 of 1988

Mr.G.M. Amin with Mr. P.S. Champaneri for the claimants

Mr.D.K. Nakrani for Mr. Shantilal S. Shah for the respondent No.2-Union of India.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 23/03/99

ORAL JUDGEMENT

1. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has challenged legality of the common judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Acquisition Reference Nos. 2 of 1984 to 22 of 1984 and 37 of 1984. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, on June 28, 1973. We may state that Land Reference Case No. 2 of 1984 was treated as the main case and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (1) open plots (2) common plots (3) private roads and (4) agricultural lands of village Dudharej, Taluka Wadhawan, Dist: Surendranagar for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme', was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that open plots, common plots, agricultural lands, etc. of village Dudharej were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on June 28, 1973. The lands to be acquired were specified in the said notification. The owners whose lands were sought to be acquired, were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that open plots, common plots, agricultural lands, etc specified in the notification published under Section 4(1) of the Act were needed for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme'. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on December 8, 1974. Interested persons were, thereafter, served with notices under

Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.15/per sq.yard i.e. Rs.17.98 ps per sq.mtr., but, having regard to the materials placed before him, the Land Acquisition Officer, by his award dated May 2, 1983, offered compensation to the claimants at the rate of Rs.2.50 ps to Rs.5.00 per sq.mtr for agricultural and non-agricultural lands respectively. By the said award, the land owners were also offered compensation at the rate of Rs.1.00 per sq.mtr for private roads and common plots. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District court, Surendranagar, which were numbered as Land Acquisition Reference Nos.2 of 1984 to 22 of 1984 and 37 of 1984. In the reference applications, the claimants pleaded that the lands acquired were very valuable, and having regard to over all development, which had taken place near the acquired lands, as well as potentiality of the agricultural lands for building purpose, they were entitled to higher compensation. In view of different nature of the acquired properties, the claimants had claimed different amounts of compensation ranging between Rs.10 to Rs.24 per sq.mtr before the Reference Court. The reference applications were contested by the present appellant vide written statement Exh.15. In the reply, it was stated that those claimants, who had not laid any claim in response to service of notices under Section 9 of the Act, were not entitled to any enhanced compensation. It was pleaded that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.16. In order to substantiate the claim advanced in the reference applications, the claimants examined (1) Kanjibhai Popatbhai at Exh.28, (2) Mathurdas Jagjivan at Exh.36, (3) Murubha Jitsingh at Exh.37, (4) Gajendrasingh Merubha at Exh.38, (5) Nikhilkumar Vadilal Shah at Exh.39, (6) Kantilal Girdharlal at Exh.40, (7) Pathabhai Merubhai at Exh.41, (7) Dilavarsinh Mobatsinh at Exh.48, (8) Salembhai Nazarali at Exh.49, (9) Motibhai Ratubhai at Exh.50, (10) Dilipsingh Velubha Zala at Exh.51, (11) Premchandbhai Kalidas Shah at Exh.52, (12) Pratapbhai Himmatlal at Exh.64, (13) Savitaben Khodidas at Exh.58, (14)

Yashwantraai Girdharlal Shah at Exh.59, (15) Kantilal Girdharlal Shah at Exh.62 and (16) Ranchhod Pitamber at Exh.66. On behalf of the State Government, two witnesses were examined, namely, Rajendrakumar Shantilal at Exh.72 and Parshottam Nanjibhai Bhesjaria at Exh.89. The claimants had also produced documentary evidence in support of their claim for higher compensation. On appreciation of evidence, the Reference Court held that the compensation offered by the Land Acquisition Officer for open plots, common plots, roads, and agricultural lands was inadequate. The Reference Court noticed that the lands under acquisition were very near to the northern boundary of the city of Surendranagar and huge development at the relevant time had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the lands under acquisition for development of Surendranagar city. Having regard to nature of acquisition, the Reference Court was of the opinion that the lands under acquisition should be treated as a big homogeneous parcel of the plots consisting of several big and small plots of lands and there was uniform potential value with respect to non-agricultural lands as well as agricultural lands. In view of the over all development which had taken place near the acquired lands, the Reference Court deduced that it was not necessary to resort to belting method while ascertaining the market value of the acquired lands. It was further held by the Reference Court that the claimants were entitled to same amount of compensation as may be determined for non-agricultural lands for common plots and roads acquired. After taking into consideration documentary evidence produced by the parties, the Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 663, 719, 580, 633 and 606 were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.12/- per sq.mtr by the impugned common award, which has given rise to the present appeals. The Reference Court has also granted statutory benefits available to the claimants under different provisions of the Act.

3. The learned Government Counsel submitted that the sale instances relating to Survey Nos. 663, 719, 633, and 606 were not proved and, therefore, the same could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was submitted that development in the nearby area had taken place after the acquisition of the lands in the present

case and, therefore, the said development could not have been made basis for the purpose of determining market value of the acquired lands. The learned Counsel vehemently submitted that there cannot be uniform potential value of the lands irrespective of fact whether the land is non-agricultural land or agricultural land and, therefore, uniform determination of market value for agricultural as well as non-agricultural lands made by the Reference Court should be set aside. It was pleaded that the sale instances referred to and relied upon by the witnesses of the State Government ought to have been relied upon for the purpose of determining market value of the acquired lands and the Reference Court was not justified in not considering the same at all. The learned counsel claimed that belting method ought to have been resorted to while determining market value of the acquired lands. It was vehemently pleaded that the Reference Court was not justified in holding that the claimants were entitled to 12% additional amount of compensation under Section 23(1-A) of the Act from the date of publication of notification under Section 4(1) of the Act till the date of the award, as possession of the lands acquired was taken on December 28, 1973 and, therefore, direction to pay 12% additional amount of compensation from the date of publication of notification under Section 4(1) of the Act till the date of the award should be set aside. The learned counsel also pleaded that the Reference Court was not justified in directing the Acquiring Body to pay interest on the additional amount of compensation payable under Section 23(1-A) of the Act and solatium payable under Section 23(2) of the Act and, therefore, the said direction also should be set aside. What was stressed was that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.12/- per sq.mtr and, therefore, the impugned common award should be set aside.

4. Mr. G.M. Amin and Mr. P.S. Champaneri, learned counsel for the claimants, submitted that the sale deed dated April 28, 1969, relating to Survey No.606 produced at Exh.27 as well as sale deed dated August 17, 1966, relating to Survey No.580 produced at Exh.28, are not only comparable but relevant for the purpose of ascertaining the market value of the acquired lands and, if these sale deeds are taken into consideration, determination of market value of the acquired lands at the rate of Rs.12/- per sq.mtr cannot be said to be excessive at all warranting interference of this Court in the present group of appeals. Learned counsel, Mr. G.M. Amin, vehemently contended that the Reference Court was not justified in directing the Acquiring Body to pay

interest at the rate of 9% per anum from February 17, 1974 and thereafter at the rate of 15% per annum till realisation of the amount, inasmuch as the date of taking over possession of the acquired lands was December 28, 1973, and, therefore, the direction to pay interest from December 28, 1973 ought to have been given. The learned counsel for the claimants further pleaded that the claimants had produced previous award of the Court dated August 13, 1962, rendered in respect of lands of Surendranagar town at mark 94/94 and the same ought to have been taken into consideration by the Reference Court while ascertaining the market value of the acquired lands. What was highlighted by the learned counsel for the claimants was that there was an over all development near the acquired lands at the time of publication of notification under Section 4(1) of the Act and, having regard to possibility of acquired lands being put to better use, the award of compensation at the rate of Rs.12/- per sq.mtr should not be interfered with by the Court.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase is not resorted to if there is evidence of comparable sales or other evidence for computation of the market value. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining the market value of the acquired lands. Those sale instances are tabulated in paragraph 28 of the judgment. However, the sale instances in respect of Survey Nos. 663, 719, 633 and 606 are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The claimants produced sale deed dated April 28, 1969 in respect of Survey No.607 of Surendranagar town at Exh.27. Witness Dilavarsinh Mobatsinh Exh.48 has stated that Rana Mobatsinh Babubhai was his father and his father had sold Survey No.607 admeasuring 1606 sq.yard to Rajasinh Kethabhai at the rate of Rs.6.50 ps per sq.yard. The witness has testified before the Court that the land bearing Survey No.607 was just near the acquired lands

and that in the year 1964 the residential buildings were also constructed near the acquired lands. The witness claimed in his deposition that the development near the acquired lands had taken place since 1954 and prices of the land had been increasing day by day since the year 1964. In his cross examination, the witness stated that Survey No.607 was at a distance of only one field from Surendranagar-Dhrangadhra State Highway and Survey No.607 was an open piece of land when it was sold. The witness further stated in his cross examination that he had sold his another land bearing Survey No.993 to Shantineketan at the rate of Rs.7.50 ps to Rs.8.00 per sq.yard in the year 1962. This is a sale relating to small piece of land, but, sale relating to a small piece of land cannot be ignored altogether while ascertaining the market value of large tracts of the land acquired, more particularly, in view of the decision of the Supreme Court rendered in the case of Land Acquisition Officer, Revenue Divisional Officer, Chittor vs. L. Kamalamma (SMT) Dead by LRS and others, (1998) 2 Supreme Court Cases 385, wherein, it is held that when no sales of comparable land are available where large chunks of land has been sold, even the transactions in respect of smaller extent of land can be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed. In the case of State of Gujarat and others vs. Rama Rana and others, 1997 (3) GLR 1954, the Supreme Court has ruled that the Court has statutory duty to subject oral evidence to a great scrutiny and to determine a just market value of the lands acquired. If the evidence of Dilavarsinh Mobatsinh is subjected to scrutiny, it becomes evident that sale of Survey No.607 was voluntary and the said Survey Number was adjacent to the acquired lands. Sale deed Exh.27 indicates that the land was sold at the rate of Rs.6.50 ps per sq.yard, i.e. Rs.7.77 ps per sq.mtr. Having regard to the considerations, such as time at which Survey No.607 was sold, the purpose for which it was sold, nature of consideration, and the manner in which the transaction was brought out, in our view, sale deed Exh.27 is relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. As observed earlier, sale had taken place on April 28, 1969, whereas notification under Section 4(1) of the Act in the present case was published on July 17, 1973 and, therefore, if reasonable rise in price of the land is considered at the rate of 20% per annum because of

time-lag between the date of sale and the date of publication of notification, it can safely be said that the land bearing Survey No.607 would have fetched roughly Rs.16 per sq.mtr in April 1973. In comparison to large tracts of lands acquired, survey No.607 is a small piece of land and, therefore, if appropriate deductions are made towards development of the land, we are of the opinion that the market value of the acquired lands would be Rs.12/per sq.mtr on the relevant date. Similarly, Exh.28 is sale deed dated August 17, 1966. It was relating to Survey No.580 of Surendranagar town and the land admeasured 134.77 sq.mtr. Witness, Mathurdas Jagjivan, examined at Exh.36, has stated in his evidence that Survey No.580 was sold by him by a document dated August 17, 1966 to Lalitkumar Manilal Shah. The evidence of witness Kanchibhai Popatbhai, recorded at Exh.28, shows that Survey No.580 was sold by witness Mathurdas Jagjivan at Rs.11/- per sq.yard, i.e, Rs.13.73 ps per sq.mtr. A perusal of the evidence of witness Mathurdas Jagjivan and witness Kanchibhai Popatbhai and sale deed Exh.28 makes it clear that sale of Survey No.580 was voluntary and the said survey number was situated quite near the acquired lands. Under the circumstances, this sale instance also can be taken into consideration advantageously for the purpose of ascertaining the market value of the acquired lands on the relevant date. As observed earlier, the sale deed was executed on August 17, 1966, whereas the notification under Section 4(1) of the Act was published on June 17, 1973 and, therefore, if reasonable rise in price of the land at the the rate of 10% is considered, Survey No.580 could have been sold at the rate of Rs.24/per sq.mtrs on the relevant date. However, this is a sale relating to a very small piece of land and, therefore, appropriate deductions will have to be made for the purpose of ascertaining the market value of the acquired lands. Having regard to the facts of the case, we are of the view that, if 50% is deducted from the price of Survey No.580 as indicated on the relevant date, the acquired lands will have to be valued at Rs.12/- per sq.mtr as on the relevant date. Therefore, Exh.27 and Exh.28 read with oral evidence of witness Dilavarsinh Mobatsinh and Mathurdas Jagjivan, would indicate that the price of non-agricultural lands acquired on the relevant date was Rs.12/- per sq.mtr. In our opinion, the Reference Court has not committed any error in determining the market value of the non-agricultural lands acquired at the rate of Rs.12/- per sq.mtr. However, the Reference Court was not justified in holding that there is uniform potential value with respect to non-agricultural land and agricultural land under acquisition and, therefore, the market value of both the

kinds of lands should be uniform as well as identical. It hardly needs to be emphasized that an agricultural land is subject to several restrictions before it could be put to non-agricultural use. For the purpose of developing agricultural land, one would be required to incur expenditure for providing enough space for roads, sewers, drains, lay out, etc. Under the circumstances, agricultural lands and non-agricultural lands could not have been assessed on the same footing and appropriate deductions will have to be made for ascertaining the market value of the acquired agricultural lands on the basis of market value of the acquired non-agricultural lands. The Supreme Court, in the case of P.Ram Reddy & others vs. Land Acquisition Officer, Hyderabad, Urban Development Authority, Hyderabad and others, (1995) 2 Supreme Court Cases 305, has laid down that the Court should deduct reasonable amount from the price of non-agricultural land while ascertaining the market value of agricultural lands. Having regard to the facts and circumstances of the case, we are of the opinion that interest of justice would be served if 25% is deducted from the price of non-agricultural lands for the purpose of ascertaining the market value of agricultural lands and, accordingly, we hold that the market value of agricultural lands acquired in the present case was Rs.9.00 per sq.mtrs. as on the relevant date.

6. The submission that belting system ought to have been adopted has no substance and deserves to be rejected. We may state that before the acquisition proceedings were initiated, there was an over all development near the acquired lands and several structures had come up adjacent to the acquired lands. The evidence of witnesses examined by the claimants indicates that the development in the area had started since 1954 and there was pressure on the lands in Surendranagar town. It is not brought to the notice of the Court that the lands acquired were abutting on any National Highway or State Highway, though some lands acquired were near the State Highway. So far as the belting method is concerned, the Supreme Court in L. Kamalamma [(1998) 2 Supreme Court Cases 385] (supra) laid down as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages, Many a discerning customer may prefer to

stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

In view of the abovereferred to principles laid down by the Supreme Court, we are of the opinion that it is not necessary to resort to belting method while determining market value of the acquired lands. In view of our finding that the market value of the acquired agricultural lands was Rs.9.00 per sq.mtr. on the relevant date, the appeals filed by the State Government will have to be partly allowed.

7. In paragraph 35 of the impugned award, the Reference Court has held that the claimants would be entitled to 12% additional amount of compensation from the date of publication of notification under Section 4(1) of the Act till the date of the award, meaning thereby, from June 28, 1973 to May 2, 1983. The record of the case indicates that possession of the acquired lands was taken on December 28, 1973. It is agreed between the Acquiring Authorities and the claimants that possession of the acquired lands was taken on December 28, 1973 and there is no dispute on this point. As the date of taking possession was earlier than the date of the award made by the Land Acquisition Officer, the Reference Court was not justified in holding that the claimants would be entitled to additional amount of compensation payable under Section 23(1-A) of the Act from the date of publication of notification under Section 4(1) of the Act till the date of the award. We hold that the claimants would be entitled to additional amount of compensation at the rate of 12% from the date of publication of notification under Section 4(1) of the Act till the date of possession, i.e. from June 28, 1973 to December 28, 1973. The Reference Court has also held that the claimants would be entitled to 9% interest from February 17, 1974 for a period of one year and thereafter at the rate of 15% per annum till the realisation of the amount under Section 34 of the Act. However, as observed earlier, it is agreed upon between the parties that possession of the lands acquired was taken on December 28, 1973 and, therefore, we hold that the claimants would be entitled to interest at the 9% from December 28, 1973, for a period of one year and thereafter at the rate of 15% per annum till the realisation of the amount, and not

from February 17, 1974 as held by the Reference Court. We further notice from the schedule annexed to the impugned award that the claimants are paid interest on additional amount of compensation payable to them under Section 23(1-A) of the Act as well as solatium payable under Section 23(2) of the Act. The said direction could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Maharau Srawan Hatkar, Judgment Today 1995 (2) S.C.583. Therefore, the direction given by the Reference Court to the Acquiring Authorities to pay interest on additional amount of compensation payable under Section 23(1-A) of the Act as well as solatium payable under Section 23(2) of the Act is quashed and set aside.

7. For the foregoing reasons, all the appeals filed by the appellant are partly allowed. It is held that the market value of the acquired non-agricultural lands on the relevant date was Rs.12.00 per sq.mtr., whereas the market value of the acquired agricultural lands on the relevant date was Rs.9.00 per sq.mtr. The claimants would be entitled to additional amount of compensation at the rate of 12% from the date of publication of notification under Section 4(1) of the Act till the date of possession, i.e. from June 28, 1973 to December 28, 1973. The claimants would also be entitled to interest at the 9% under Section 34 of the Act from December 28, 1973, for a period of one year and thereafter at the rate of 15% per annum till the realisation of the amount, and not from February 17, 1974 as held by the Reference Court. The claimants will not be entitled to any amount of interest on additional amount of compensation payable to them under Section 23(1-A) of the Act as well as on the amount of solatium payable under Section 23(2) of the Act. The rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. The office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(swamy)